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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

OLIVIER MARTY et al

Group Art Unit: 1722

Serial No.: 10/512,077

Examiner: G Nagesh Rao

Filed: December 9, 2004

For: PROCESS FOR MODIFYING THE PROPERTIES OF A THIN LAYER AND SUBSTRATE APPLYING SAID PROCESS

RESPONSE TO RESTRICTION REQUIREMENT

Honorable Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

In response to the restriction requirement mailed January 4, 2007, Applicants elects Claims 1 to 11 with traverse for prosecution in this application.

According to 37 CFR 1.475(b)(1) a National stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to a product and a process specially adapted for the manufacture of the product.

In the present case, Claim 12 is directed to a product, a substrate formed by a nanostructured support with an upper surface, the support being deformed following treatment and the surface including at least one thin layer deformed in correspondence with the support.

Claim 1 recites a process specifically for manufacturing this product, a method including at least forming at least one

thin layer on a nanostructured support and treating the nanostructured support with upper layer to generate internal strains in the support causing its deformation at least in the plane of the thin layer so as to assure corresponding deformation of the thin layer.

The restriction requirement states that the claims lack the same or corresponding special technical feature because substrate Claims 12 through 16 refer to product-by-process, but the limitation is not given any weight because the inventive scope of the claims pertains to a product claim and only the features of the product itself.

This statement is true for all product-by-process claims; the scope of such claims is always determined by the product itself and not by an process steps used to obtain the product. In order for 37 CFR 1.475(b)(1) to have meaning, the product claims must be judged solely on the basis of the structure of the product, and the process claims must be judged solely on whether the steps are specially adapted for the manufacture of a product of the defined structure. In the present case, it is clear that the process steps of Claim 1 are specially adapted to manufacture a product having the structure of Claim 12.

Accordingly, Groups I and II as defined in the restriction requirement comply with the unity of invention requirement of 37 CFR 1.475(b)(1).

Moreover, PCT Article 27(1) states that "[n]o national law shall require compliance with requirements relating to the form or contents of the international application different from or additional to those which are provided for in this treaty and the regulations." In the present case, the international application was found to possess unity of invention, and Applicants submit therefor that it is inappropriate for a lack of unity of invention to be found in the national stage.

Withdrawal of the restriction requirement is therefore requested.

Respectfully submitted,



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